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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC

In the matter of )

Calling Party Pays Service Option )  
in the Commercial Mobile Radio Services )

WT Docket No. 97-207

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BELL ATLANTIC<sup>1</sup> REPLY COMMENTS**

Bell Atlantic respectfully replies to the comments submitted on the Commission's Notice of Inquiry on Calling Party Pays service. The comments generally support the offering of Calling Party Pays service by CMRS providers under limited federal regulation. They do not, however, provide any legal or policy basis for regulating the billing services provided by local exchange carriers for CMRS providers to collect their Calling Party Pays charges.

**I. THE COMMISSION SHOULD SUPPORT CALLING PARTY PAYS SERVICE BY IMPOSING ONLY LIMITED FEDERAL REGULATIONS**

Most commenters agree that the expansion of Calling Party Pays service can benefit the public and argue that the Commission should:

- 1) allow Calling Party Pays to develop freely and in response to market forces and consumer demand;
- 2) take only those actions that are clearly necessary to remove the barriers that frustrate development of Calling Party Pays service; and

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<sup>1</sup> The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

- 3) ensure that Calling Party Pays service is subject to consistent national policies, not to state regulation.<sup>2</sup>

Bell Atlantic agrees. These conclusions are compelled by the Commission's definition of "commercial mobile radio service," which clearly encompasses Calling Party Pays as well as other mobile services offered to the public.<sup>3</sup> They are also compelled by the two bedrock policies underlying Section 332: (1) market forces should be allowed to shape the development of wireless services, and (2) any regulation that is adopted must first be shown to be clearly needed, and then imposed on a consistent national basis by the Commission, not on a piecemeal basis by individual states.<sup>4</sup>

The adverse impact of disparate state regulation is immediately apparent with regard to Calling Party Pays service. The desired expansion of that service would be impaired were states to impose their own requirements on the offering of that service. Bell Atlantic Mobile's Washington-Baltimore cellular system, for example, serves the District of Columbia, and parts of Maryland and Virginia. Were these three jurisdictions to impose their own disclosure requirements or other regulations on Calling Party Pays service Bell Atlantic Mobile would be faced with separate and potentially conflicting requirements. The Commission should thus declare that Calling Party Pays constitutes Commercial Mobile Radio Service, which the Commission will regulate only where clearly necessary, through the adoption of consistent,

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<sup>2</sup> See, e.g., CTIA Comments at 3 ("[t]he Commission has a significant federal interest in ensuring the uniform, rapid development of CPP, free of redundant and burdensome State and local obligations").

<sup>3</sup> See 47 C.F.R. § 20.6.

<sup>4</sup> *Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 1411, 1417-1419 (1994).

national rules. Accordingly, if the Commission decides that rules are needed to govern notifications to customers placing calls to CMRS customers subscribing to Calling Party Pays service, it should propose a single, national, notification procedure that would preempt any state-imposed notification obligations. The Commission should also assert its authority under Section 332 to assert that CMRS providers may not be subject to lawsuits seeking refunds or other damages based on a caller's use of Calling Party Pays service.

It is also important for the Commission to declare that states may not seek to regulate Calling Party Pays under the guise of treating it as a "term or condition" of service. As numerous commenters demonstrate,<sup>5</sup> Calling Party Pays service is no more a "term or condition" of service than call-forwarding, "Follow-Me Roaming," or any other feature or offering. States thus may not impose requirements on whether or how that service is offered or priced.

## **II. THE COMMISSION SHOULD NOT REGULATE LOCAL EXCHANGE CARRIER BILLING SERVICES USED BY CMRS PROVIDERS OFFERING CALLING PARTY PAYS SERVICE**

Most commenters acknowledge that Calling Party Pays service involves a CMRS provider's charge to the caller, and that the local exchange carrier is providing a billing service when it bills Calling Party Pays charges on behalf of CMRS providers. They also acknowledge that the Commission has not regulated the local exchange carriers' competitive billing services for more than 10 years because it has no jurisdiction to do so.

A few CMRS providers, however, disregard the Commission's clear rulings on this issue and ask the Commission to regulate the local exchange carriers' competitive billing services.

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<sup>5</sup> See, e.g., AT&T Wireless Comments at 1 (Calling Party Pays is "ancillary to the 'rates for commercial mobile service'"); CTIA Comments at 14-16.

Their position is flatly inconsistent with Congress' directive "to provide for a pro-competitive, de-regulatory national policy framework." There is absolutely no policy or legal basis for the Commission to turn back the clock and regulate the local exchange carriers' competitive billing services.

Centennial argues that Section 201 of Title II gives the Commission authority to regulate local exchange carrier billing services. According to Centennial, "the Commission relied on Section 201 to establish the basic landline access charge regime under which landline LECs must provide billing data to, and bill for, interstate calls carried by interexchange carriers." Centennial Comments at 4 (*citing In the Matter of MTS and WATS Market Structure*, 93 F.C.C.2d 214, 254-55 (1983)). Centennial is wrong, and the Commission has held precisely the opposite. In 1986, the Commission determined that "billing and collection services provided by local exchange carriers are not subject to regulation under Title II of the Act."<sup>6</sup>

Vanguard attempts to distinguish the Commission's prior rulings on local exchange carrier billing services by asserting that "wireless providers have few, if any, practical alternatives to LEC billing of CPP calls." Vanguard Comments at 6. The Commission has twice rejected precisely this same argument when it was made by long distance carriers and

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<sup>6</sup> *In the matter of Detariffing of Billing and Collection Services*, 102 F.C.C.2d 1150, 1169 (1986). The Commission also decided that it could not exercise its ancillary jurisdiction under Title I unless it would "be directed at protecting or promoting a statutory purpose." *Id.* at 1170. (quoting *Second Computer Inquiry*, 77 F.C.C.2d 384, 433 (1979)). The Commission further concluded that "because there is sufficient competition to allow market forces to respond to excessive rates or unreasonable billing and collection practices on the part of exchange carriers, no statutory purpose would be served by continuing to regulate billing and collection service for an indefinite period." *Id.*

information service providers.<sup>7</sup> The record before the Commission showed that “competition is defined not only by credit card companies, collection agencies, service bureaus and the LECs, but by the customers (ICs) themselves.”<sup>8</sup> Vanguard offers no explanation why it cannot rely on the competitive billing alternatives the Commission has already found are available to long distance carriers and information service providers.

Airtouch also attempts to distinguish the Commission’s prior rulings by arguing that “[u]nlike [Operator Service Providers] or [Information Service Providers], CMRS carriers have the potential to compete for the same customer minutes as the LEC.” Airtouch Comments at 20. Airtouch is suggesting a distinction without a difference. Bell Atlantic and other local exchange carriers are, in fact, competing with OSPs and IPs “for the same customer minutes.” Bell Atlantic has for years provided operator services, such as collect and calling card calls, and information services, such as audiotex. But the fact that local exchange carriers compete with other companies does not give the Commission jurisdiction to require local exchange carriers to provide billing services for those companies, particularly where the Commission has already found that local exchange carrier billing services are fully competitive.

Motorola tries to distinguish billing for long distance calls from billing for Calling Party Pays calls by claiming that “[w]ith CPP, a CMRS call is actually **jointly provided** by the originating (usually wireline) carrier, the terminating CMRS carrier, and, if applicable, the

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<sup>7</sup> *Id.* at 1170-71; *In the Matter of Audio Communications, Inc. Petition for a Declaratory Ruling that the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act*, 8 FCC Rcd 8697, 8699 (1993).

<sup>8</sup> 102 F.C.C.2d at 1170.

intervening long distance carrier.” Motorola Comments at 18, n. 42 (emphasis supplied).<sup>9</sup>

Motorola is wrong because local exchange carriers participate in long distance calls just as they participate in Calling Party Pays calls. In either case, the local exchange carrier is providing the facilities that the caller uses to access the other carrier’s network, irrespective of whether it is a wireless network or a long distance network.

Sprint Spectrum argues that the Commission can regulate local exchange carrier billing of Calling Party Pays charges by requiring that existing interconnection agreements be modified to require local exchange carriers to pay compensation to CMRS providers for calls to Calling Party Pays customers. Sprint Spectrum Comments at 9-15. Sprint is wrong for at least two reasons. First, Bell Atlantic’s interconnection agreements with CMRS providers (including Sprint Spectrum) already provide reciprocal compensation for local CMRS calls, including local calls to CMRS customers that subscribe to Calling Party Pays service. Since the cost of completing a local call to a CMRS subscriber is not affected by the CMRS subscriber’s decision to use Calling Party Pays service, there is nothing to modify in these interconnection agreements.<sup>10</sup>

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<sup>9</sup> Omnipoint makes essentially the same argument, claiming that “unlike interexchange carrier billing and collection services, the Calling Party of a Calling Party Pays call is not a customer of the CMRS carrier.” Omnipoint Comments at 13. Curiously, Omnipoint never explains why it even needs local exchange carrier billing and collection services if the party to be billed (i.e., the caller) “is not a customer of the CMRS carrier.”

<sup>10</sup> To the extent that Sprint Spectrum is proposing that it receive a greater reciprocal compensation rate for calls to its Calling Party Pays subscribers than it would pay for calls to a local exchange carrier’s subscribers, its proposal would violate the Commission’s rules. Section 51.711(a) requires that “[r]ates for transport and termination of local telecommunications traffic shall be symmetrical . . . .” 47 C.F.R. § 51.711(a).

Second, what Sprint Spectrum is really asking the Commission to do is force local exchange carriers to resell CMRS services (i.e., Call Party Pays service).<sup>11</sup> But nothing in the Telecommunications Act gives the Commission the authority to impose such an obligation on local exchange carriers. Every carrier is free to choose whether it will resell any other carrier's services. And if a local exchange carrier chooses to resell a CMRS provider's service, it should be able to set the rate on that service without regulatory interference.

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<sup>11</sup> See Sprint Spectrum Comments at 10 ("the charges to the LEC customer under a CPP plan should not exceed the CPP interconnection charges incurred by the LEC, plus its incremental charges for billing its customers"). Omnipoint carries this proposal one step further and argues that "CPP Calling Parties should receive a single 'all inclusive' price for CPP calls that includes both the CMRS Charge and any other charge made by the LEC for the call, *e.g.*, any message unit charges." Omnipoint Comments at 11. The Commission cannot order local exchange carriers to bill their customers at a rate that differs from the rate that appears in its intrastate tariffs. Nor should the customer be billed an "all inclusive" rate when Omnipoint itself proposes that "CMRS providers should be required to include [in any Calling Party Pays call announcement requirement], **at most**, the CMRS charges associated with the CPP call." Omnipoint Comments at 25 (emphasis supplied).


## CONCLUSION

The Commission should not impose new requirements or obligations on local exchange carriers offering billing services for Calling Party Pays. The Commission has already decided not to regulate the billing services provided by local exchange carriers. These decisions were based on sound policy and legal considerations. The Commission should continue to follow these precedents and not attempt to regulate local exchange carrier billing services for Calling Party Pays.

Respectfully submitted,

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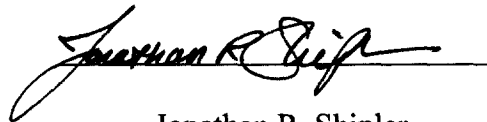
  
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Dated: January 16, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 1998, a copy of the foregoing "Bell Atlantic Reply Comments" was served by first class U.S. mail, postage prepaid, on the parties listed on the attached service list.

A handwritten signature in black ink, appearing to read "Jonathan R. Shipler", written over a horizontal line.

Jonathan R. Shipler

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